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Supreme Court of the United States.

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SUPREME COURT, U.S.

OCTOBER TERM, 1951.

No. 414

SAMUEL MANDEL, ADMINISTRATOR OF THE ESTATE OF ROBERT WILLIS DILLARD, JR., DECEASED,

Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION OF NATIONAL ASSOCIATION OF CLAIMANTS' COMPENSATION ATTORNEYS AS AMICUS CURIAE.

SAMUEL B. HOROVITZ,
Attorney for Petitioner for Rehearing.

Supreme Court of the United States.

OCTOBER TERM, 1951.

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PETITION OF NATIONAL ASSOCIATION OF CLAIMANTS' COMPENSATION ATTORNEYS AS AMICUS CURIAE.

To the Honorable the Justices of the Supreme Court of the United States:

The National Association of Claimants' Compensation Attorneys prays your Honorable Court for leave to file a brief in support of a petition for a rehearing in the above-entitled matter upon the following considerations:

The National Association of Claimants' Compensation Attorneys is an organization which is limited to attorneys engaged in helping injured workers in the fields of workmen's compensation, negligence, railroad law and admiralty law.

When the National Association of Claimants' Compensation Attorneys (NACCA) was organized it was intended to be limited only to attorneys engaged in the field of workmen's compensation. After a period of time the compensation attorneys recognized the inadequacy of the com-

pensation laws generally and the necessity for some other form of law which would more equitably and adequately compensate the injured workers and their families in case of death. It was therefore natural for the association to expand its membership to include the fields of negligence, railroad law and admiralty law.

The decision of this Court in the above-captioned cases is of such tremendous importance to employees generally and to federally employed seamen in particular that NACCA, consistently with its policy to aid injured workers, hereby seeks to intervene in order to prevent what would appear to be a serious inroad into existing remedies which would impair the seamen's maritime rights and which will create a precedent, to the great prejudice of employees generally and maritime employees specifically. The decision in these cases would divide the class of seamen and provide an inadequate land remedy (compensation) for part of the class while the remainder would continue to enjoy the present maritime rights. This is an objective which has been sought after by the private steamship companies for a great many years but which has been consistently denied by the Congress after a study of the subject matter. Because of this lack of uniformity, the private shipowner is in a position to seek further extension of the compensation acts in order to make the remedy uniform as to all seamen. With this background, it is respectfully suggested that this Court should re-evaluate its decision to determine its correctness.

From the time the Public Vessels' Act was enacted in 1925, all interested parties proceeded on the assumption that its provisions extended to the benefit of federally employed seamen as well as other personnel. Hundreds upon hundreds of suits were instituted and decided upon that assumption without any objection being ventured as to the federally employed seamen's rights to bring an action

against the Government under that statute. The Government's acquiescence is manifested in its failure to assert such objection to those suits. It therefore seems apparent that the Government and the litigants recognized the intention of Congress to afford a remedy to federally employed seamen under the Public Vessels' Act. It was not until comparatively recent times that the Government introduced the new theory that federally employed seamen were limited to the Compensation Act. This construction was never contemplated by the Congress.

It would appear that this Court's approach to the problem was confused by the failure to put its finger on the real issue in the case. Your Honorable Court considered the problem from the standpoint of whether the seamen have an election to choose the compensation remedy or the maritime rights. Actually, the question was not one of election but whether the Compensation Act is exclusive. The seamen may well have been limited to the maritime rights without any election, and this fact would not be at all dependent upon the exclusiveness of the compensation law. The literal language of the statutes would support such a conclusion. The Court held that it would be unfair to permit an election to public vessel seamen and not to other federally employed seamen. Without debating that question of fairness and assuming its correctness, that fact does not lead to the conclusion that the Compensation Act is exclusive. It merely would determine that the seamen should not be permitted an election of remedies and to that extent put them on a par with other federally employed seamen. By thus taking away from the seaman the right of election, he is left, under the literal language of the Compensation Act and of the Public Vessels Act, to the enjoyment of his maritime rights, to the exclusion of any right under the Compensation Act. In this view, the seamen are given no greater and no lesser rights than the seamen

employed through the War Shipping Administration. This would clearly make for a consistent workable and equitable whole, which was what this Court was seeking to accomplish.

If the present opinion of this Court is permitted to stand unmodified, it will result in a heart-breaking situation generally. The maritime law is generally recognized as the most liberal of all laws for injured employees and it serves as a pattern for legislators everywhere. In England a study of the Compensation Act was made, with the result that it was found to be entirely inadequate, and a new remedy was adopted in 1947 which makes the compensation law simply an auxiliary to the right to recover damages. The present English law is now patterned after our own maritime law. It would indeed be most unfortunate if we should fail to recognize the wholesome character of our own maritime law and initiate its disintegration by an extension of the proven inadequate compensation laws.

The result which this Court desires can be achieved simply by taking away the right to an election but leaving intact the enjoyment of the present maritime rights. This construction would be compatible with the plain meaning of the language in the Compensation Act and in the 1949 amendment to that Act, and with the language of the Public Vessels' Act.

WHEREFORE it is respectfully urged that this Court grant a rehearing in the above-entitled matter and that the National Association of Claimants' Compensation Attorneys be granted the privilege of filing a brief as amicus curiae.

Respectfully submitted,

NATIONAL ASSOCIATION OF CLAIMANTS' COMPENSATION ATTORNEYS,

By SAMUEL B. HOROVITZ,

Attorney.

Certificate of Counsel.

I, Samuel B. Horvitz, hereby certify that this petition is presented in good faith and not for delay.

SAMUEL B. HOROVITZ,
Attorney for Petitioner.